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Supreme Court of the United States

October Term, 1963

No. [redacted]152

AMPCO PRINTING-ADVERTISERS' OFFSET CORP., THE KATZ PARKING SYSTEM, INC. and THE GEORGIAN PRESS, INC.,

Plaintiffs-Appellants,

against

THE CITY OF NEW YORK, ROBERT F. WAGNER, as Mayor of the City of New York, ABRAHAM D. BEAME, as Comptroller of said City, and HILDA G. SCHWARTZ, as Director of Finance of said City,

Defendants-Respondents.

LOUIS J. LEFKOWITZ, as Attorney-General of the State of New York,

Intervenor-Respondent.

On Appeal from the Court of Appeals of the State of New York

APPELLANTS' BRIEF IN REPLY TO THE BRIEF OF THE ATTORNEY-GENERAL OF THE STATE OF NEW YORK, INTERVENOR-RESPONDENT

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Supreme Court of the United States

October Term, 1963

No. 1185

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against

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The principal questions in the case have already been dealt with in appellants' jurisdictional statement and appellants' reply brief. This brief deals only with such matters in intervenor-respondent's brief (which was not filed until after appellants' reply brief had been filed) as we deem to require additional reply.

Of the cases cited by intervenor-respondent on pages 4 and 5 of his brief, the following cases (*Walters* v. *City*

of St. Louis, 347 U. S. 231 (1954); *Caskey Baking Co.* v. *Virginia*, 313 U. S. 117 (1941); *Allied Stores of Ohio, Inc.* v. *Bowers*, 358 U. S. 522 (1959); *United States* v. *Department of Revenue of State of Illinois*, 202 F. Supp. 757 (N. D. Ill. 1962), *aff'd per curiam*, 371 U. S. 21 (1962)) are, we submit, wholly inapplicable to the case at bar. They are relevant to the instant case only to the extent that they support the proposition that classification for the purposes of legislation must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike—a proposition which, of course, we do not question.

The remainder of the cited cases, we submit, are also not relevant to the instant case. In *New York Rapid Transit Corp.* v. *City of New York*, 303 U. S. 573 (1938), this Court upheld the constitutionality of a classification incorporated in a tax levied upon "utilities," which, as defined therein, included a regulated private rapid transit railroad, but did not include, e.g., taxicabs and transit lines operated by a municipality. The regulated nature of that taxpayer and the reasons peculiar thereto set forth by this Court (at 580, 581) in support of the classification there involved clearly distinguish that case from the case at bar.

Rockwell Spring and Axle Co. v. *Romulus Township*, 365 Mich. 632, 114 N. W. 2d 166 (1962), cited at page 5 of the Attorney-General's brief, involves solely a distinction between lessees of tax-exempt land. Specifically, lessees of county owned tax-exempt land were subject to the tax, while lessees of land owned by state-supported educational institutions were not. That case plainly has no bearing on the issues presented in the case at bar.

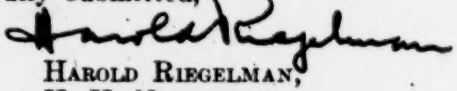
Above all else, it is clear from a reading of the above-cited cases that they do not resolve or dispose of the issues presented by this appeal.

The suggestion in the first sentence of the last (incomplete) paragraph on page 5 of the Attorney-General's brief, is, we submit, disposed of at pages 9 *et seq.* of appellants' jurisdictional statement.

Vaughan v. *State of New York*, 272 N. Y. 102, 5 N. E. 2d 53 (1936), *appeal dismissed per curiam*, 300 U. S. 638 (1937), cited by intervenor-respondent on page 6 of his brief, is wholly irrelevant to the instant issue.

The questions presented by this appeal are substantial and they are of public importance. This Court should, we submit, note probable jurisdiction of the case.

Respectfully submitted,



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